

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

ALLSTATE INSURANCE COMPANY,  
ALLSTATE INDEMNITY COMPANY,  
ALLSTATE FIRE & CASUALTY INSURANCE  
COMPANY, AND  
ALLSTATE PROPERTY & CASUALTY  
INSURANCE COMPANY,

Plaintiffs,

vs.

21st CENTURY PHARMACY, INC., AND  
ALBERT ALISHAYEV,

Defendants.

C.A. No. 1:17-cv-03731-WFK-SMG

**PLAINTIFFS' ANSWER AND AFFIRMATIVE DEFENSES TO 21st CENTURY  
PHARMACY, INC.'S AND ALBERT ALISHAYEV'S COUNTERCLAIM**

Plaintiffs, Allstate Insurance Company, Allstate Indemnity Company, Allstate Fire & Casualty Insurance Company, and Allstate Property & Casualty Insurance Company (hereinafter "Allstate" or "Plaintiffs"), answer the Counterclaim interposed by Defendants 21st Century Pharmacy, Inc. ("21st Century") and Albert Alishayev ("Alishayev") (collectively, "Defendants") as follows:

**COUNTERCLAIM**

1. Plaintiffs deny the allegations contained in paragraph 1.
2. Plaintiffs admit the allegations contained in paragraph 2.
3. Plaintiffs deny the allegations contained in paragraph 3.
4. Plaintiffs deny any factual allegations contained in paragraph 4 and leave all questions of law to the Court for its ultimate determination.

5. Plaintiffs deny the allegations contained in paragraph 5, but admit that the Allstate Claimants identified in Allstate's Complaint (ECF No. 1) assigned his/her benefits under New York's No-Fault laws to 21st Century.
6. Plaintiffs deny any factual allegations contained in paragraph 6 and leave all questions of law to the Court for its ultimate determination.
7. Plaintiffs deny the allegations contained in paragraph 7.

#### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Defendants' Counterclaim fails to state a claim against the Plaintiffs upon which relief can be granted.

#### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The actions taken by the Plaintiffs were made in good faith, without malice and in conformity with any and all applicable laws.

#### **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

The actions taken by the Plaintiffs were in full accord with applicable State and Federal law and regulations, including the New York State Insurance Department's Regulations governing the investigation of claims for No-Fault benefits.

#### **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

All or part of the Defendants' Counterclaim is barred by the doctrine of unclean hands.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

All or part of the Defendants' Counterclaim is barred by the doctrine of res judicata and/or collateral estoppel.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The Defendants have failed to meet statutory and/or legal conditions precedent to bring some or all of the allegations contained in the Counterclaim.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

All or part of the Defendants' Counterclaim is barred or limited by 11 N.Y.C.R.R. § 65-4.6.

**JURY TRIAL DEMAND**

The Plaintiffs demand a trial by jury on all claims.

[SIGNATURE PAGE FOLLOWS]

SMITH & BRINK, P.C.

*/s/ Michael W. Whitcher*

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Dated: July 26, 2017